

**KENNETH H. RYESKY, ESQ., STATEMENT FOR THE RECORD,
UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE WAYS
& MEANS, HEARING ON INTERNAL REVENUE SERVICE
TARGETING CONSERVATIVE GROUPS**

I. INTRODUCTION:

The House Ways & Means Committee held a Hearing on 17 May 2013, regarding revelations that the Internal Revenue Service has targeted applicants for tax-exempt organization status based upon partisan political orientation. Public comments were solicited. This Commentary is accordingly submitted.

II. COMMENTATOR'S BACKGROUND & CONTACT INFORMATION:

Background: The Commentator, Kenneth H. Ryesky, Esq., is a member of the Bars of New York, New Jersey and Pennsylvania, and is an Adjunct Assistant Professor, Department of Accounting and Information Systems, Queens College of the City University of New York, where he teaches Business Law courses and Taxation courses. Prior to entering into the private practice of law, Mr. Ryesky served as an Attorney with the Internal Revenue Service ("IRS"), Manhattan District. In addition to his law degree, Mr. Ryesky holds BBA and MBA degrees in Management, and a MLS degree. He has authored several scholarly articles and commentaries on taxation topics, including tax-exempt organizations,¹ has served as a panelist at continuing professional education seminars on tax-exempt organizations,² and has submitted commentaries to hearings of various Congressional Committees, including a Ways & Means subcommittee hearing on tax-exempt organizations.³

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¹ E.g., "Honorary Board Membership, Real Tax Liability: Limits to Tax-Exempt Organization Honorary Board Member Immunity under Internal Revenue Code § 6672," 24 *Akron Tax Journal* 93 (2009). <<http://www.uakron.edu/law/lawreview/taxjournal/atj24/docs/Ryesky.pdf>>; "Lawyer's Bookshelf" column, *New York Law Journal*, June 14, 2011, p. 6 (review of *Nonprofit Law: The Life Cycle of a Charitable Organization* by Elizabeth Schmidt).

² E.g., National Business Institute, Seminar: "How to Keep Tax-Exempt Organizations in Compliance," Long Island, NY (23 May 2011), brochure available at <http://www.mlg.com/pdf_110523_NBI.pdf>.

³ Hearing, Tax-Exempt Charitable Organizations, Subcommittee on Oversight, House Ways & Means Committee, 110th Cong., 1st Sess., Serial No. 110-55, pp 180 - 184 (24 July 2007) <<http://purl.access.gpo.gov/GPO/LPS87952>>.

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III. COMMENTARY ON THE ISSUES:

A. The Dangers of Politicizing the IRS:

Though neither major political party in America can claim an untainted history with respect to the misuse of the IRS as a political weapon,⁴ there now seems to be acknowledgment from diverse partisan quarters of the dangers posed by administering the Internal Revenue laws in a politically biased manner.

More detailed treatises regarding such dangers are legion, and this Commentary makes no attempt to fully catalog all particulars. That basic American liberties are under dire threat was apparent throughout the hearing. It is further noted that systemic misbehaviors on the part of the IRS facilitate and encourage the rationalization of tax evasion at large by a cynical public whose voluntary compliance is essential, and also the rationalization of tax frauds, including but not limited to tax fraud through identity theft (of which the Committee has, of late, evinced much interest⁵). Moreover, given the IRS's expanded role in the healthcare provision process under the and Affordable Care Act, the potential damage to the American public by the politicization of the IRS can exceed the potential damage to America's tax-exempts by a factor of lakhs if not millions.⁶

⁴ See, e.g. Benjamin C. Bradlee, *Conversations with Kennedy* 111 - 112 (Norton, 1975) (recounting the Kennedy administration's use of IRS audits as a weapon against political enemies); Robert P. Strauss, "State Disclosure of Tax Return Information: Taxpayer Privacy Versus The Public's Right to Know," 5 *State Tax Notes* 26 (1993) (discussing the use of IRS audits against political enemies by the Nixon administration).

⁵ The Commentator has recently discoursed at length to the Committee on the IRS's abject failure to institute appropriate countermeasures to identity theft tax fraud. *Hearing on Tax Fraud Involving Identity Theft* (Subcommittees on Oversight and Social Security), 112th Congress, 2nd Session, 8 May 2012 <<http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg78817/pdf/CHRG-112hhrg78817.pdf>>; *Hearing on Social Security Administration's Death Master File*, (Subcommittee on Social Security) 2 February 2012 <<http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg78179/pdf/CHRG-112hhrg78179.pdf>>.

⁶ This concern of the Commentator has also been asserted by another former IRS attorney, Congresswoman Michelle Bachmann (MN-06). *Bachmann Statement on IRS Targeting Conservative Groups*, 10 May 2013, <<http://bachmann.house.gov/press-release/bachmann-statement-irs-targeting-conservative-groups>>.

B. The *Z Street* Case:

This Commentary notes the case of *Z Street v. Shulman*, wherein the Complaint alleges that the IRS Headquarters has "a special unit ... to determine whether the organization's activities contradict the Administration's public policies" and similar allegations to the effect that the IRS evaluates applications for tax-exempt status based upon the organizations' partisan political orientation and attitudes.⁷ By the time the Government's attorneys filed the Motion to Dismiss on 1 November 2010 (in which it denied *Z Street*'s allegations),⁸ someone in the higher echelons of the IRS should surely have been on notice of that its units may have been using improper political considerations in evaluating applications for the tax-exempt status.

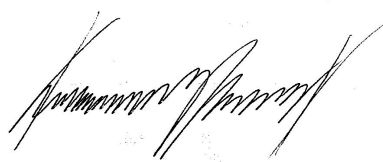
That *Z Street*'s agenda is unabashedly pro-Israel is only incidental. It might, however, prove interesting to the Committee to explore what policies were utilized by the IRS to evaluate tax exemption applications by organizations espousing agendas contrary to that espoused by *Z Street*, and statistical numbers of approvals, disapprovals, and times of approval/disapproval.

C. Conclusion:

Excesses of the taxation function have wreaked social and political havoc in situations as diverse as ancient Egypt, the French monarchy, and the British Raj in India. The Committee ought not underestimate the gravity of the IRS's politically-directed abuses now coming to light, and the perils they pose to American liberty.

17 May 2013

Respectfully submitted,



⁷ Complaint, *Z Street v. Shulman*, 2:10-cv-04307-CMR, E.D. Pa. (25 August 2010)
<http://www.zstreet.org/index.php?option=com_content&view=article&id=96:z->

For procedural, jurisdictional and venue reasons, the case has been transferred from the Eastern District of Pennsylvania to the District Court for the District of Columbia, Index No. 1:12-cv-00401-KBJ, where it remains in litigation.

⁸ Memorandum in Support of Government's Motion to Dismiss, *Z Street v. Shulman*, 2:10-cv-04307-CMR, E.D. Pa. (1 November 2010)
<http://www.zstreet.org/index.php?option=com_content&view=article&id=138:government-response&catid=1&Itemid=41>

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